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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1969

No. 1296

PALMER W. (PETE) NORRIS, ROLAND OLIVER, and DONALD WEHUNT, who sue on behalf of themselves and all other members of the Alabama Republican Party similarly situated,

Petitioners

vs.

ALABAMA REPUBLICAN STATE EXECUTIVE COMMITTEE, J. RICHARD BENNETT, JR., as Chairman, and CAROLYN N. GOLDEN, as Secretary, Alabama Republican State Executive Committee, and MABEL AMOS, as Secretary of State, State of Alabama,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA AND OTHER RELIEF

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No.

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et al.,
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vs.

ALABAMA REPUBLICAN STATE
EXECUTIVE COMMITTEE, et al.,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA AND OTHER RELIEF

TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Court to review the judgment of the Supreme Court of Alabama rendered on the 4th day of March, 1970 which denied to your petitioners, who sued on behalf of themselves and all other members of the Alabama Republican Party similarly situated, a temporary mandatory injunction to force the ALABAMA REPUBLICAN STATE EXECUTIVE COMMITTEE to hold a statewide Republican primary as that committee had been instructed by the Alabama Republican Convention on the 29th day of June, 1968.

OPINIONS BELOW

No opinion has been issued in connection with the denial of the temporary mandatory injunction.

JURISDICTION

The judgment of the Supreme Court of Alabama was entered on the 4th day of March, 1970, and is annexed hereto in Appendix A, *infra,* p. A1.

The statutory provision believed to confer jurisdiction upon this Court to review the judgment in question is 28 U.S. Code, Section 1257(3), in that petitioners below claimed their rights under the First and Fourteenth Amendments, United States Constitution, had been violated.

QUESTION PRESENTED FOR REVIEW

Can Alabama by statute dictate to the Republican Party of Alabama that the choice of whether to hold a primary or a convention for the nomination of candidates for public and party offices, including nominations for representatives to the United States Congress, shall be in the state executive committee rather than in the state convention, consistent with the First and Fourteenth Amendments, United States Constitution?

CONSTITUTIONAL PROVISIONS STATUTES AND RULES INVOLVED

The constitutional provisions, statutes and rules involved are set forth below in Appendix B, pp. B1, *et seq.*

STATEMENT OF THE CASE

On the 29th day of June, 1968, at a legal session of the Republican Party of Alabama in convention assembled, at which each of the petitioners were duly selected and seated delegates, a resolution was adopted which "instructed" the ALABAMA REPUBLICAN STATE EXECUTIVE

COMMITTEE to take all the legal steps necessary to accept and come under the provisions of the Alabama primary election law, Title 17, Section 336, *et seq.*, Code of Alabama, 1940, as amended, for the purpose of nominating all Republican candidates for public and party office.

There has been no convention of the Republican Party of Alabama since the adjournment of the 1968 convention at which this resolution was adopted.

The ALABAMA REPUBLICAN STATE EXECUTIVE COMMITTEE has had one or more meetings since the adjournment of the 1968 convention prior to a meeting on the 31st day of January, 1970. The state executive committee was aware of the resolution of instruction concerning the holding of a primary election.

However, at the late date of the 31st day of January, 1970, the state executive committee flouted the will of the Republican electorate of Alabama and decided that nominations for state offices, as defined in the Alabama primary election law, and including nominations for United States congressmen, be made in a state convention to be held in Birmingham, Alabama, on or about the 17th day of July, 1970.

Thereafter, as soon as practicable, these petitioners, on behalf of themselves and all others similarly situated, sought relief in the Alabama courts claiming usurpation of power by the state executive committee under Title 17, Section 336, Code of Alabama, 1940, by its thwarting of the will of the Republican electorate of Alabama expressed in convention. The pertinent part of this statute relied upon is as follows:

> "***A political party may, by its state executive committee, elect whether it will come under the primary election law.***"

On the 25th day of February, 1970, petitioners here caused to be filed in the Circuit Court, Tenth Judicial Cir-

cuit of Alabama, in Equity, Jefferson County, Alabama, a bill for a temporary mandatory injunction, and other relief, being case number 160-157, seeking to enforce the rights of the Republican electorate to a party primary.

The matter was set down for a hearing on Saturday, the 28th day of February, 1970, and on that date, after oral argument on the question of the jurisdiction of the court, the court concluded that it did not have jurisdiction.

The federal constitutional issues were raised clearly in that case:

> "7. Complainants allege that respondents ALABAMA REPUBLICAN STATE EXECUTIVE COMMITTEE, J. RICHARD BENNETT, JR., as Chairman, and CAROLYN N. GOLDEN, as Secretary, interpret and have interpreted the provisions of Title 17, Section 336, *et seq.*, as reposing in such ALABAMA REPUBLICAN STATE EXECUTIVE COMMITTEE the exclusive and sole power and right of determining whether or not to hold a primary election for some or any and all public and party offices and come under the primary election law of Alabama as conclusively shown by the convention call in paragraph 5 above and in disregard of the resolution of the 29th day of June, 1968, in paragraph 4 above; complainants aver that this interpretation causes Title 17, Section 336, Code of Alabama, 1940, to be invalid and unconstitutional as in violation of the Constitution of Alabama, 1901, Declaration of Rights, and the United States Constitution, First Amendment, and the due process, equal protection, and privileges and immunities clauses of the Fourteenth Amendment, United States Constitution, in that the ultimate repository of power in the Alabama Republican Party, derived from the Republican electorate, is the state convention of duly selected

delegates legally assembled, and not the ALABAMA REPUBLICAN STATE EXECUTIVE COMMITTEE, and that such laws of the State of Alabama so interpreted would cause the State of Alabama to have acted in excess of its police powers in the regulation of political parties, by illegally, unlawfully, and unreasonably interfering with the internal organization of the Alabama Republican Party."

The basic, fundamental relief prayed for was:

"C. That the Court issue its temporary mandatory injunction requiring and ordering the ALABAMA REPUBLICAN STATE EXECUTIVE COMMITTEE to withdraw forthwith from the office of respondent MABEL AMOS, as Secretary of State, State of Alabama, any statements or other documents required by Title 17, Section 336, Code of Alabama, 1940, demonstrating the declination of the ALABAMA REPUBLICAN STATE EXECUTIVE COMMITTEE of participation in the primary election of the 5th day of May, 1970, and to give that notice required by Title 17, Section 346, Code of Alabama, 1940, in accordance with the resolution of the 29th day of June, 1968."

Immediately after the denial by the Circuit Court, Jefferson County, Alabama, of this relief, a renewed application for the temporary mandatory injunction, in accordance with applicable Alabama law, was filed in the Supreme Court of Alabama. This was the 2nd day of March, 1970, and the Supreme Court of Alabama heard oral argument on Wednesday, the 4th day of March, 1970.

The submission in the Supreme Court of Alabama was on all of the material matters and things previously presented to the lower court, and, in addition there was an allegation that the delay of the ALABAMA REPUBLICAN EX-

ECUTIVE COMMITTEE in reaching its decision to follow the convention method of selecting nominees for state offices, including nominees for representatives to the United States Congress, until the 31st day of January, 1970, caused a legal fraud to be perpetrated on the Republican electorate in Alabama. There was the further allegation:

> "DD. Applicants further allege that because and as a result of the legal fraud perpetrated upon the Republican electorate of Alabama, and the violations of those rights granted by the Declaration of Rights, Constitution of Alabama, and the First and Fourteenth Amendments, United States Constitution, that the March 1, 1970, deadline prescribed by the Alabama primary election law for participation under the Alabama primary election law should and ought to be suspended inasmuch as there is more than adequate time for the Alabama Republican Party to conduct its duties and obligations under the Alabama primary election law."

The same relief as to the temporary mandatory injunction was sought in the Supreme Court of Alabama as in the lower court. Additional relief was sought by requesting the Supreme Court of Alabama to set a new and different date for the compliance by the ALABAMA REPUBLICAN STATE EXECUTIVE COMMITTEE with the Alabama primary election law.

Additional dates which have a bearing on this matter, as prescribed by the Alabama primary election law are: (1) The state executive committee must make known its list of candidates to the secretary of state of Alabama prior to 55 days before the 5th day of May, 1970; and (2) The secretary of state of Alabama certifies these names to the various probate judges in Alabama prior to 45 days before the 5th day of May, 1970.

The relief sought here would require that new and different dates for filing and certification be set either by this Court, or the Supreme Court of Alabama upon mandate from this Court.

REASONS FOR GRANTING THE WRIT

It appears to be generally accepted that political parties, as such, derive no particular authorization or protection from the United States Constitution, and that actually a political party is simply an unincorporated political association. See *Robinson v. Holman,* 181 Ark 428, 26 SW2d 66. However, since they do perform a vital function in the political process they are public bodies. *Katz v. Fitzgerald,* 152 Cal 433, 93 P 113. As such, political parties are protected constitutionally by the freedom of assembly clause of the First Amendment, United States Constitution, as made applicable to the several states by operation of the Fourteenth Amendment, United States Constitution. See *Bell v. Hill,* 123 Tex 531, 74 SW2d 113.

Federal constitutional protections are applicable where primary elections, as in Alabama, have by law been made an integral part of the election machinery of a state. See, *e.g., Smith v. Allwright,* 321 US 649, reh. den., 322 US 769.

The primary election law of Alabama, on its face, is a legitimate exercise of the right of Alabama to lay down rules for the protection of the public in the conduct of an election. See *U.S. v. Ex. Comm. of Dem. Party of Dallas Co.,* 254 FSupp 537.

Petitioners submit that the question posed does not involve this Court, nor any court, with the internal organization of the Alabama Republican State Executive Committee, or the Alabama Republican Party. What it does involve is the power of Alabama, consistent with federal constitutional limitations, to grant power and authority to a state

executive committee to override a decision of the Republican electorate of Alabama. Compare and distinguish *Ray v. Blair,* 343 US 214.

Generally, the convention of a political party is supreme. *Bell v. Hill,* 123 Tex 531, 74 SW2d 113. See also *Democratic-Farmer-Labor State Central Committee v. Holm,* 227 Minn 52, 33 NW2d 831; *State ex rel Hatch v. Smart,* 24 Mont 413, 62 P 591; *State ex rel Howells v. Metcalf,* 18 SD 393, 100 NW 923; *Seay v. Latham,* 143 Tex 1, 182 SW2d 251. An executive committee is, therefore, that means by which the will of the convention is executed.

In this case, the Republican Party of Alabama in convention, representing the Republican electorate, has directed its state executive committee to follow a certain course by participating in primary elections. The state executive committee, relying upon Title 17, Section 336, Code of Alabama, 1940, as the source of its power and authority, has not seen fit to do so, particularly for state offices, including United States congressmen.

It seems apparent that this matter is not a public one, and, hence, not one over which Alabama can exercise its police powers. Otherwise, the regulation invades the constitutionally protected right of the Republican electorate of Alabama to assembly. If the right of Alabama to interfere with the Republican electorate to such an extent be upheld, then the outer limits of interference border on complete state control of political parties.

It might be noted that in Alabama the Democrat Party does not have any problem in relation to its state executive committee, since that committee is chosen by the Democrat electorate in primary elections, as contrasted with the convention method utilized by the Republican Party, except in isolated instances. There would be, then, a complete delegation by the Democrat electorate to the state executive

committee of decision-making power. This has not occurred in the Republican Party of Alabama where, it is submitted, the Republican electorate can instruct its state executive committee.

CONCLUSION

Petitioners submit the writ of certiorari should be granted, and that this Court, or the Supreme Court of Alabama, set new dates to enable the Republican Party of Alabama to participate statewide in the primary election of the 5th day of May, 1970.

The Alabama Primary Election Law was enacted in 1931. With modern communications media available, it is realistic to conclude that the Republican Party of Alabama has ample time prior to the election of the 5th day of May, 1970, to effectively participate.

Respectfully submitted,

FRED BLANTON, JR., Esq.

Counsel for Petitioners

APPENDIX A

STATE OF ALABAMA JUDICIAL DEPARTMENT
SUPREME COURT OF ALABAMA

OCTOBER TERM 1969-70

6th Div. 781

Ex parte: Palmer W. (Pete) Norris, Roland Oliver, and Donald Wehunt, etc., Applicants

APPLICATION FOR TEMPORARY MANDATORY INJUNCTION

(Re: Palmer W. (Pete) Norris, Roland Oliver, and Donald Wehunt, etc.

vs. Alabama Republican State Executive Committee)
Jefferson Circuit Court, Equity

The Applicants having filed in this Court an application for a temporary mandatory injunction and the same having been argued and submitted to the Court of said application and answer of the respondents,

IT IS ORDERED AND ADJUDGED that the application be and the same is hereby denied, at the costs of the applicants, for which costs let execution issue.

APPENDIX B

Constitution, Statutes and Rules Involved

I

Constitution of the United States, Amendment I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably assemble, and to petition the Government for a redress of grievances.

II

Constitution of the United States, Amendment XIV, Section 1.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

III

Title 17, Section 336, Code of Alabama, 1940.

Election by party as to whether it will come within primary law.—

A primary election, within the meaning of this chapter, is an election held by the qualified voters, who are members of any political party, for the purpose of nominating a candidate or candidates for public or party office. Primary elections are not compulsory. A political party may, by its state executive committee, elect whether it will come under the primary election law. All political parties are presumed to have accepted and come under the provisions of the pri-

mary election law, but any political party may signify its election not to accept and come under the primary election law by filing with the secretary of state, at least sixty days before the date herein fixed for the holding of any general primary election, a statement of the action of its state executive committee, certified by its chairman and secretary, which statement shall contain a copy of the resolution or motion adopted declining to accept and come under the primary election law.***

IV

Title 17, Section 340, Code of Alabama, 1940.

Date of elections.—

If any primary elections are held at the expense of the state or counties, except special primary elections, they shall be held on the first Tuesday in May, 1940, and on the first Tuesday in May every two years thereafter,***

V

Title 17, Section 341, Code of Alabama, 1940.

Committees.—

There may be provided a committee of each party for the state and each political subdivision of the state, including counties and municipalities, said committees to be selected in such manner as may be provided for by the governing authority of each party,***

VI

Title 17, Section 344, Code of Alabama, 1940

Certification of names of candidates by chairman.—

The chairman of the state executive committee of each party entering a primary election shall, not less than fifty-five days prior to the date of holding the election, certify to the secretary of state the names of all candidates for nomi-

nation to federal, state, circuit, and district offices, the state senate and house of representatives, and all other candidates except candidates for county offices. ***The secretary of state shall, not less than forty-five days prior to the date of holding the primary election, certify to the probate judge of every county in which the election is to be held the names of the opposed candidates for nomination to federal, state, circuit, and district offices, the state senate and house of representatives, and all other opposed candidates, except candidates for county offices.***

VII

Title 17, Section 346, Code of Alabama, 1940.

Notice to be filed by committee.—

When it shall be desired by the state executive committee or governing authority of any political party to enter the primary election ordered to be held under the provisions of this chapter, said committee or governing authority for the state shall give public notice thereof by filing a copy of the resolution of such governing body with the secretary of state of Alabama.***

VIII

Title 17, Section 348, Code of Alabama, 1940.

Filing declaration of candidacy.—

Any person desiring to submit his name to the voters in a primary election shall, not later than March first, next preceding the holding of such primary election, file his declaration of candidacy in the form prescribed by the governing body of the party with the chairman *** of the state executive committee, if he be a candidate for any office except a county office,***

IX

Title 17, Section 412, Code of Alabama, 1940.

Meaning of words and phrases.—

The words and phrases in this chapter shall, unless such construction be inconsistent with the context, be construed as follows: *** "county officers" or "county offices" do not include state senators, members of the legislature, circuit judges, circuit solicitors, congressmen, members of the state executive conventions, nor any officers whose compensation is paid by the state of Alabama or the United States.

B5

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Petitioners

vs.

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Respondents

MOTIONS

A. TO DISPENSE WITH PRINTING OF PETITION FOR WRIT OF CERTIORARI AT THIS TIME WITH LEAVE TO LATER FILE PRINTED PETITION

B. TO REQUIRE RESPONDENTS TO FORTHWITH FILE REPLY BRIEF

C. TO EXPEDITE CONSIDERATION OF PETITION FOR WRIT OF CERTIORARI

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Counsel for Movants

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No.

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vs.

ALABAMA REPUBLICAN STATE EXECUTIVE COMMITTEE, et al.,

Respondents

MOTIONS

TO THE HONORABLE THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

PALMER W. (PETE) NORRIS, ROLAND OLIVER and DONALD WEHUNT, who sue on behalf of themselves and all other members of the Alabama Republican Party similarly situated, would show the Court as follows in support of the motions to be made:

1. This matter involves a primary election in Alabama, which election is, by law, scheduled for the 5th day of May, 1970.

2. Petitioners are seeking to have their Republican Party of Alabama to participate in this primary election, based upon alleged violations of first amendment rights.

3. Time is then of the essence of this matter, and petitioners are of the considered opinion that because of modern communications that Republican participation in this primary election is a reality should the Court so order.

THEREFORE, Petitioners move the Court:

A. To dispense with the printing of these motions and the petition for writ of certiorari AT THIS TIME, with leave to substitute as soon as possible the printed motions and petition;

B. To order the respondents to file forthwith any reply brief; and

C. To expedite the consideration of the petition for writ of certiorari.

Respectfully,

FRED BLANTON, JR., Esq.

Counsel for Movants